

**TASK FORCE
ON THE
PRESERVATION
OF
KENTUCKY CEMETERIES**

**FINAL REPORT
DECEMBER 2001**

December 3, 2001

Dear Fellow Kentuckian,

When we began this examination of Kentucky cemeteries over six months ago, it was beyond comprehension that it would grow into as expansive a project as it has become. Literally, input has been received from thousands of Kentucky families and cemetery operators, scores of public officials and from countless numbers of Native Americans, veteran groups, local historians and families outside the bounds of the Commonwealth but who have ties here. There are also government officials in other states who are closely watching these proceedings and, presumably, will use our efforts as a blueprint for action in their states. Clearly, there is much riding on this important work.

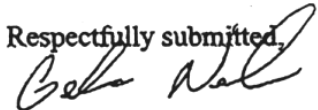
We have been humbled by the selfless work so many have put into this project. There are our colleagues with the City of Louisville and the Board of Alderman who supported early efforts to fund work and provide other resources in local cemeteries that were the genesis of it all. Local volunteers from the length and breadth of the state have donated untold hours attempting to clean and maintain cemeteries in their communities. The Attorney General's office has at all times been professional and dedicated to the successful completion of our work. Finally, there are our colleagues in the Kentucky General Assembly who will, hopefully, accept this body of knowledge and make the very difficult budgetary decisions to accept the recommendations of the Task Force on Kentucky Cemeteries.

We cannot say enough about each and every Task Force member, and ex-officio supporter, who spent hours upon dedicated hours with this work. Whether in meetings, in the back of vans traveling hundreds of miles across the state or bushwhacking through bramble bushes and chigger infested overgrown cemeteries, they have done so without complaint, and with a remarkable amount of enthusiasm. The people of our Commonwealth are indebted to you.

Our efforts turn now to convincing the General Assembly to accept our recommendations. Each cemetery in our inventory is a chapter in the wonderfully rich and varied history of our Commonwealth; each gravesite, a page with its own unique contribution to who we are today. These voices are calling out for us to take this unprecedented action, and to take it now.

We have learned that addressing the issue of how we preserve, memorialize and celebrate those who have gone on before us will be ongoing, and costly. However, this plan lays out a reasonable and cogent starting point. We look forward to seeing our Commonwealth begin that journey.

Respectfully submitted,



Senator Gerald Neal, Co-Chair



Representative Reginald Meeks, Co-Chair

I. INTRODUCTION

1. Louisville Crematory and Cemetery Co. Inc.

In August 2000, Attorney General Ben Chandler was approached by Louisville City Alderwoman Denise Bentley concerning the deplorable condition of three historic cemeteries in Louisville and concern that a court-

appointed receiver whose responsibility it was to maintain the cemeteries was misusing trust funds.

Those cemeteries? Eastern, Greenwood



and Schardein? were at one time owned by the Louisville Crematory and Cemetery Co. Inc. (LCC), which had been bankrupt and defunct since the early 1990s, after it was discovered that the cemetery had over a number of years engaged in pattern of multiple burials and grave desecrations. Although there was a "perpetual care" trust fund in place to provide for the maintenance costs, interest income from the trust was not sufficient to cover these costs.

Throughout the 1990s these historic cemeteries, particularly Eastern and Greenwood, were the subject of numerous maintenance efforts by community volunteers, the City of Louisville, the Office of Attorney General, University of Louisville, Dismas Charities and others. Nevertheless, because of the lack of sufficient funds and volunteers and because of the size of these cemeteries? some 60 acres in all? these efforts could not be sustained and were never sufficient to provide the type of care that befits places of such community significance. Instead of being places of pride as is Cave Hill Cemetery, which is immediately adjacent to Eastern Cemetery, these cemeteries fell into such neglect that they were eyesores and the subject of repeated complaints from outraged citizens.

On January 11, 2001, Kentucky Attorney General Chandler announced the filing of an action against the LCC receiver for misuse of those trust funds. (The receiver has since been indicted on 51 felony counts related to misuse of perpetual care trust funds.)

In addition, Attorney General Chandler announced a plan to permanently provide for the maintenance of Eastern, Greenwood and Schardein cemeteries. The plan calls for the use of \$1.2 million recovered by the Attorney General's Office in multistate consumer protection law suits, local matching funds, a one-time appropriation of



\$125,000 and the existing perpetual care funds to create a \$2 million endowment. The proposal was submitted to leadership of the 2001 Kentucky General Assembly. Because of legislation passed in 2000, these funds recovered by the Attorney General were frozen until appropriated by the General Assembly. Accordingly, although the funds were unbudgeted for any other purpose and were available under negotiated settlements for consumer protection purposes such as proposed by the Attorney General, they could not be applied to that purpose without the assent of the General Assembly.

In the past the Attorney General's Office has applied recovered funds from a variety of consumer protection lawsuits in the following ways: consumer education programs, public service announcements,

consumer protection litigation against Anthem Insurance Co. to recover charitable assets, distribution of toys to underprivileged children, sponsoring childhood literacy programs and sponsoring conferences on empowering the black community.

The 2001 General Assembly declined to implement the proposal of the Attorney General. However, at the Attorney General's request, Representative Reginald Meeks, representing the 42nd District, containing Greenwood Cemetery, filed HCR 166, which

called for the establishment of a statewide task force to study and report on cemetery issues affecting the entire state. Although HCR 166 passed the House of Representatives unanimously, it did not receive a hearing in the Senate.

2. Administrative Order 01-01

Therefore, on May 21, Attorney General Chandler signed Administrative Order 01-01 (AO 01-01) creating a 28-member Task Force on the Preservation of Kentucky Cemeteries. (Appendix A). The Task Force consists of Representatives of the General Assembly and is co-chaired by Representative Reginald Meeks and Senator Gerald Neal. Other members include State Representatives Rick Nelson and Ron Crimm, representatives of local government, universities, state agencies with jurisdiction regarding cemeteries and/or historic preservation, and concerned citizens. Under AO 01-01, the Task Force's charge is to review and report on the following:

1. The role of state and local government in overseeing cemeteries;
2. The cemeteries in the Commonwealth in need of maintenance, upkeep or improvement;
3. The condition of cemeteries maintained by the Department of Parks under KRS 148.161;
4. The number of cemeteries in the Commonwealth that are insolvent or that are facing insolvency in the near future;
5. The impact of in-kind services provided to the cemeteries from community organizations and governments, nonprofit organizations, and other civic-minded persons and groups;
6. The number of neglected cemeteries in the state;
7. The availability of cemetery space in the geographic areas of the state;
8. The identification of federal or private funding sources for cemeteries;
9. The suitability of applying funding mechanisms used in other states to resolve identified concerns;
10. Recommendations for abating the problems or inadequacies noted in the study;
11. Establish a system for citizens to report cemeteries that are private and exempt but may need attention by state and/or local government; and
12. Feasibility of establishing a permanent cataloguing of historical cemetery information at Kentucky State University to preserve our heritage and facilitate research and future preservation activities statewide.

This report addresses the issues identified in AO 01-01 and offers recommendations to address these issues.

II. TASK FORCE MEETING SCHEDULE, SITE VISITS AND SURVEYS

The Task Force's meeting and site visit schedule is provided below. In all, the Task Force has held four public meetings and conducted site visits on eight days. On those site visits the Task Force has visited 30 cemeteries in 19 counties from Perry County in the east to McCracken County in the west, from Kenton County in the north, to Warren county in the south. Task Force staff visited an additional 83 cemeteries. Summaries of the site visits are provided in Appendix B along with newspaper clippings.

In addition, in an effort to identify all cemeteries in the state and report on their conditions and issues they face, survey forms were mailed to a wide range of public and private entities. Responses were entered into a database to assist in analyzing the responses. See Appendix C. A summary of the survey results is presented below in Section IV.



Task Force on the Preservation of Kentucky Cemeteries

Cemetery Site Visit Schedule

DATE	EVENT	LOCATION	
May 31, 2001	Meeting	Louisville	
July 10, 2001	Site Visit	Henderson	Mount Zion, Fernwood,
		Owensboro	Greenwood, Early Pioneer
July 25, 2001	Site Visit	Lexington	Lexington Cemetery, Cove Haven Cemetery, African Cemetery #2
		Covington	Linden Grove Cemetery
August 9, 2001	Site Visit	Frankfort	Green Hill Cemetery
		Shelbyville	Calvary Cemetery
		Louisville	Eastern, Greenwood, Newburg
August 17, 2001	Site Visit	Ashland	Calvary Catholic Cemetery
		Westwood	Dixon Cemetery
		Greenwood	Greenup War Memorial, Riverview Cemetery
August 20, 2001	Meeting	Louisville	
September 7, 2001	Site Visit	Mayfield	Maplewood Cemetery
		Paducah	Oak Grove Cemetery, Cemetery located next to Plaza Tire Service
September 20, 2001	Site Visit	Berea	Berea Cemetery
		Hazard	Combs Cemetery, Cornett Cemetery
September 25, 2001	Update Mailed to Task Force		
October 4, 2001	Site Visit	Taylorsville	Pioneer Cemetery
		Bowling Green	Fairview Cemetery, Pioneer Cemetery
October 16, 2001	Site Visit	Logan County	Lost City Indian Mounds
		Elkton	Glenwood Cemetery
		Hopkinsville	Neglected United Benevolent Society Cemetery
		Caldwell County	Halleck's Chapel Cemetery
October 17, 2001	DRAFT REPORT TO TASK FORCE MEMBERSHIP		
November 1, 2001	Meeting	Louisville	
November 26, 2001	FINAL DRAFT OF REPORT		
December 12, 2001	Final Meeting	Frankfort	



III. OFFICE OF ATTORNEY GENERAL STATUTORY ROLE AND DUTIES

The Office of Attorney General Consumer Protection Division has limited jurisdiction over "cemetery companies" under KRS 367.932 et. seq., which became effective in 1984. The vast majority of cemeteries in Kentucky are exempted from these statutes. Under KRS 367.932(12) cemeteries are regulated unless they meet all of the following criteria:

1. They operate nonprofit;
2. They have no salaried employees, directors, officers or managers other than maintenance caretakers;
3. They are owned and controlled by lot owners; and
4. They do not sell any pre-need merchandise or services.

Under the Consumer Protection Act (KRS 367.110-367.993), "cemetery companies" are required to meet certain regulatory requirements. Unless a cemetery meets the above criteria, under the Consumer Protection Act the cemetery company is required to maintain a perpetual care trust fund and deposit 20% of each grave sold pursuant to KRS 367.952. In addition, the regulated sellers of grave spaces, underground crypts, mausoleum crypts, and columbarium niches are required to trust a percentage, ranging from 5% to 20%, of the gross selling price of the above items sold and place that amount in an irrevocable trust fund. It is within this statutory framework that a minimum level of contribution is set for regulated cemeteries so that funds for cemetery maintenance will always be

available. As this provision establishes only a minimum, cemeteries that wish to contribute more to a perpetual care account are free to do so, as some in the Commonwealth have chosen to do.

Regulated cemetery companies are required to file annual reports with the Consumer Protection Division and to make financial records available for audits to verify that the cemetery is making the required deposits to its perpetual care trust and other accounts as required by statute. Currently there are 272 cemetery companies regulated by the Office of Attorney General.

For cemeteries not regulated under the Consumer Protection Act there is no requirement that they establish a perpetual care trust account. These cemeteries, however, may be subject to other statutory requirements regarding maintenance under KRS 381.697, as discussed in Section VI below.

The Office of Attorney General does not have jurisdiction regarding cemetery maintenance or burial practices at a cemetery unless the failure to maintain constitutes an "unfair, false, misleading or deceptive" trade practice under the general Consumer Protection statute, KRS 367.170. The Office of Attorney General has filed consumer protection actions against regulated cemetery companies who have conducted improper burials resulting in the desecration of an existing grave.

IV. KENTUCKY CEMETERIES OVERVIEW

In order to develop comprehensive information regarding issues affecting cemeteries in Kentucky, the Task Force developed and conducted two comprehensive surveys. A

financial survey was directed exclusively to each regulated cemetery in the state to develop information concerning the financial condition of perpetual care trust funds. A second, broad survey asked for



information addressing a wide range of topics including: 1) location, 2) size in acres or number of graves, 3) physical condition, 4) person or entity maintaining the

cemetery, 5) historic or cultural significance, 6) community involvement in care, 7) need for additional maintenance, 8) Existence of Perpetual Care endowment, and 9) whether neglected.

The second survey was mailed to hundreds of local officials, cemetery and funeral industry representatives, state and local historical societies and other interested individuals. In addition the survey was made available on the Attorney General's web site along with other information about the Task Force.



1. Financial Survey Results

Information has been obtained from 153 of the 272 OAG regulated cemeteries (56%).

The present value of the perpetual care trust funds for these cemeteries is \$94,526,593.

There are 86 cemeteries in this group whose projected endowment care fund appear to be sufficient to provide for future maintenance expenses when the cemetery has sold all graves. There are 12 cemeteries whose status is unknown due to incomplete information. Another 56 cemeteries' projected endowment care funds appear to be insufficient. Religious or non-profit groups had 13 cemeteries in the sufficient group, and 4 in the insufficient category. Municipal cemeteries account for 5 of the unknown status, 12 of the sufficient status, and 23 of the insufficient status.

For both groups of cemeteries the projected annual endowment care income for cemetery maintenance is \$12,625,134, and the estimated cost of maintenance if the cemetery were to be sold out is \$9,797,275. While as a whole the cemeteries appear to have sufficient funds, one cemetery has a projected shortfall of approximately \$167,758, others will be short by

small amounts and others will have large estimated surpluses. It should also be noted that some of these cemeteries might have other sources of income to offset their shortage, such as interment fees, foundation fees, etc. The Attorney General's office has provided its analysis to each responding cemetery.

2. General Survey

To date over 8,500 individual survey responses have been received. In addition, the Task Force has received compiled lists from several counties that identified an additional 4,000-4,500 cemeteries, raising the total to approximately 12,500- 13,000. As this report is being compiled survey responses continue to be received. A number of contacts from counties indicate their inability to provide a response due to lack of resources. Despite the overwhelming response, the number of cemeteries yet to be identified is likely to be in the thousands. As a direct result of this process, Kentucky will have one of the most comprehensive cemetery databases in the country.

3. Important Statistics From the Survey

- Cemeteries Entered as of November 15, 2001 9,364
- Cemeteries Reported but not entered as of 11/15/01 4,311¹
- Total Cemeteries Reported 13,675
- Counties Reporting 115/120 (96%)
- Counties Reporting 50 or more cemeteries 60 (50%)
- Counties Reporting 25 or fewer cemeteries 47 (39%)
- Cemeteries reported as "Neglected" - 1,340 (62%)

Note: only 2,157 of the 9,364 (23%) surveyed responded to this item.

TYPE OF OWNER INFORMATION

3,791 of 9,364 (40%) have provided owner type information as follows:

- Community: 48 (1%)
- Corporate: 66 (2%)
- Government: 80 (2%)
- Non-Profit Organization: 210 (5%)
- Private Family Burial Ground: 2,870 (76%)
- Religious Group: 487 (13%)
- Sole Proprietorship: 30 (1%)

ACREAGE INFORMATION:

1061 of 9,364 (11%) provided acreage information.

- Total acres represented as entered to date: 5,793 acres
- Average of cemeteries reporting acreage: 5.46 acres

¹ Sixteen (16) counties have provided copies of books compiling lists of cemeteries and burials. Many of these books were prepared in conjunction with the Kentucky Historical Society's Bicentennial Cemetery Records Project. The books were developed primarily to identify individuals buried in each cemetery. They contain little additional information about the cemetery's condition, acreage or ownership.

ABANDONMENT ISSUES²:

2157 of 9,364 (23%) provided abandonment information.

- Number reported as abandoned: 1,340 (62%)
- Owner type to abandonment rate:
Of the 1,340 which indicated abandonment, 973 (73%) also provided the type of owner information.

<u>TYPE OF OWNER</u>	<u># ABANDONED</u>
Corporate	3 (<1%)
Government	2 (<1%)
Non-Profit Organization	5 (<1%)
Private Family Burial Ground	924 (95%)
Religious Group	26 (3%)
Sole Proprietorship	13 (1%)

- Total number of acres represented as abandoned: 126.52
Note that of the 1,340, which indicated abandonment, only 108 (8%) provided acreage information. It is believed that the number of abandoned acres is grossly under reported.

MAINTENANCE ISSUES:

Entity/Group Providing Maintenance

2,537 of 9,364 (27%) provided maintenance arrangements information.

- Church: 88 (3%)
- City/County: 57 (2%)
- Donations: 157 (6%)
- Family: 155 (6%)
- None: 1,669 (66%)
- Property Owner: 63 (2%)
- Trust Fund: 348 (14%)

Maintenance Provided by:

878 of 9,364 provided information as to whom maintenance is provided by

- Community Organizations: 26 (3%)
- Government: 101 (11%)
- Non-Profit Organizations: 99 (11%)
- Person/Group: 233 (26%)

² The term **Abandoned** as used in this section of the report refers to those cemeteries that are neglected or not maintained. The term does not refer to the legal status of "abandonment" as set forth in KRS Chapter 381.720.

- Volunteers: 419 (48%)

In Need of Additional Maintenance:

2,278 of 9,364 (24%) provided this information. Of those, 1881 (83%) indicated they were in need of additional maintenance. The numbers below compare owner type to need for additional maintenance. Of the 1881 who indicated they were in need of additional maintenance, 1,402 (75%) also provided the type of owner information.

<u>TYPE OF OWNER</u>	<u># IN NEED OF ADD'L MAINTENANCE</u>
Corporate	12 (1%)
Government	25 (2%)
Non-Profit Organization	72 (5%)
Private Family Burial Ground	1,189 (85%)
Religious Group	88 (6%)
Sole Proprietorship	16 (1%)

Of 9,364 surveys entered as of November 15, 2001 only 1,061 or 11% have reported the acreage of the cemetery. The total acreage of those 1,061 cemeteries



is 5,793 acres for an average of 5.46 acres. The response from some counties has been limited due to a lack of resources at the local level. Based on the responses received, however, Kentucky could have as many as 70,000 acres occupied by

cemeteries of all sizes. To give you some reference to the scale of this acreage, Pike County, the largest county in the state, has 502,182 acres, Jefferson County has some 246,912 acres and Gallatin County, which is the smallest in the state, has some 63,527 acres.

The industry figure for costs to maintain a cemetery ranges from \$2,500 to \$6,000 per acre depending on the type of cemetery. The magnitude of this cost demonstrates the need for an innovative solution involving local, state, private and church organizations.

Noteworthy Community Volunteer Efforts



One vital element to preservation of the Commonwealth's cemeteries and graveyards is the involvement of a cemetery's community in its care. These individuals know the traditions, history, and family significance of the interred better than anyone else. Such concern is already evident in many towns and cities across Kentucky. Involvement in the care of cemeteries ranges from individuals to children's groups, community organizations, and even local governments. Listed below are some noteworthy community efforts the Task Force encountered while touring a number of the state's cemeteries.

Henderson

- In Henderson, Frank Nally, president of the Henderson County Historical and Genealogical Society, introduced the Task Force to James Blue, a member who has documented 270 cemeteries in Henderson County. Mr. Blue has also identified a number of others in two neighboring counties enabling many families to find and document resting places of their loved ones.
- Mr. Nally has also founded the Preservation Association of Cemeteries of Henderson County, which hopes to adopt a cemetery every few months for a cleanup project. Among the group's membership are individuals from Daughters of the American Revolution, Sons of the Confederacy, Boy Scouts, etc., which often adopt similar projects in this area.

Owensboro — Greenwood

- Greenwood Cemetery, in Owensboro, is an example of a successful ongoing reclamation project in an African-American cemetery. Greenwood has received a grant from the African American Heritage Commission. This cemetery's success is due in large part to concerned citizen Wesley Acton's organization and a workforce of many citizens from across the community, area businesses, and the Sons of the Confederacy, which came together to clean up and maintain the cemetery. With additional support from the County Judge and Fiscal Court through the purchase of adjacent property as a buffer, Greenwood has a bright future.

Lexington — African-American Cemetery No. 2

- At Lexington's African American Cemetery No. 2, a volunteer cemetery committee organizes maintenance, research and preservation efforts in this eight-acre cemetery that was opened in 1869. The committee also provides materials to history teachers to assist in educating students about the history of the men and women who laid the foundation for the African American community in Lexington. The University of Kentucky Department of Historic Preservation and Kentucky State University have also provided support.

Covington — Linden Grove Cemetery

- Linden Grove Cemetery in Northern Kentucky, is one of the many cemeteries in the state that a local community has chosen to adopt and care for after its original ownership was no longer viable. After a number of times where the property fell into long periods of neglect, the City of Covington and Kenton County took joint receivership of the cemetery. The two local governments have created a board with representatives of both to oversee maintenance and operational duties.

Louisville — Eastern Cemetery, Greenwood Cemetery, Newburg Cemetery

- Eastern Cemetery has been one of three Louisville cemeteries receiving assistance from Dismas Charities in the form of monthly grounds maintenance. Dismas Charities is part of Dismas Community Corrections, which provides recently released prisoners with opportunities to give back to the community and learn skills that might make them valuable to the workforce. The City of Louisville has also provided funding for necessary equipment.
- The West End Cemetery Association is involved in the preservation of Greenwood Cemetery with Dismas Charities and the City of Louisville. The community

organization provided assistance to Dismas Charities workers with maintenance and refreshments as they work in the cemetery in the warm seasons.

- Newburg Cemetery in Louisville is currently part of a well-organized cleanup effort being pursued by the Newburg-Petersburg Committee. At one point, the cemetery had grown up so much it was considered by many to be a forest but has been cleared as funds became available through fundraising efforts. The committee, however, is not sure when they will be able to complete the restoration of this historic cemetery. Newburg also received a grant from the African-American Heritage Commission.



Ashland — Calvary Catholic Cemetery, Bethesda Cemetery

- Some cemeteries owe their existence and maintenance to religious institutions, like Ashland's Calvary Catholic Cemetery. Sitting adjacent to the lost Bethesda Cemetery, a significant contrast is visible. Calvary is well maintained and cared for unlike Bethesda, where few markers remain in a dense wilderness of growth. Calvary's care is the responsibility of the area's Catholic Diocese, which sees to the operation of the cemetery and the maintenance of the grounds.

Westwood — Dixon Cemetery

- Dixon Cemetery in Westwood in Boyd County is a model of successful community action. Dixon is cared for by volunteer support from the Westwood Lions Club, which also works with a boys club to get the job done. The Lions set up tables every Memorial Day weekend to take donations, ensuring the cemetery is cared for to the best of their abilities.

Greenup — Riverview Cemetery

- Riverview Cemetery, as well as various other cemeteries in Greenup County, benefits from the work and care of some wonderful volunteer citizens who have identified and documented its existence. The Voluntary Cemetery Committee of the Greenup County Library has taken tremendous efforts to survey and document all of the graveyards in the county. With over 100 volunteers, the group is locating, assessing and updating records for 460 cemeteries in its community.

Mayfield — Maplewood Cemetery

- Another example of municipal involvement is the City of Mayfield's work with a number of area cemeteries, including Maplewood. Not only does the city's Public Works Department maintain these cemeteries; they have provided some technological advances to their citizenship when searching for information regarding cemeteries. The public works department also provides tours and maintains a web site at the following address:

<http://mayfieldky.topcities.com/cemetery/index>.

This web site can be used to access cemetery records, virtual tours and cemetery regulations of interest to the Mayfield area.

Paducah — Oak Grove Cemetery

- An example of municipal involvement is the 100-acre Oak Grove Cemetery, owned by the City of Paducah. Oak Grove contains many of Paducah's pioneer settlers and historical community leaders. One way the city raises money for its care is through Paducah's Parks Department theatrical productions called "Living History Dramas," in which members of the community portray some of the famous or notorious people interred there.

Hazard — Combs Cemetery, Cornett Cemetery

- Many of Perry County's cemeteries, including two our Task Force visited, are visited and aided in preservation of their history by the works of an organization called the Sons of the Confederacy. Local citizen Faron Sparkman and other members of the organization have visited almost every graveyard in Perry County, as well as five other surrounding Eastern Kentucky counties, resetting the markers of both Confederate and Union Veterans' graves.

Taylorsville — Pioneer Cemetery

- Tom Watson, an Associated Press reporter, has done his part in Taylorsville to make sure that another neglected cemetery will not be lost. Pioneer Cemetery is the oldest and probably most historic cemetery in Spencer County, however, it has been neglected for quite a period of time. Weeds have grown to heights that masked even its existence. By bringing his concerns about the cemetery, in which his ancestors are buried, to city officials, Mr. Watson could receive necessary support from the community and local government to save and maintain Pioneer Cemetery for the future.

Bowling Green — Old Pioneer Cemetery

- Old Pioneer Cemetery, maintained by the city of Bowling Green, is an example of an abandoned cemetery that is being restored and preserved. Bowling Green employs many innovative methods of monument preservation in this cemetery, which provides a pleasant park like setting in an urban environment.

Logan County — Lost City Indian Mounds

- Local citizen Clifton Gibbs is doing his part in Lewisburg to educate other citizens about an extensive network of Native American burial mounds. Mr. Gibbs provides tours and information regarding the Lost City mounds to individuals via the Logan County Public Library.

Hopkinsville — United Benevolent Society Cemetery

- In Hopkinsville, the police department's Community Oriented Policing (COPS) program, led by Patrolman Ken Roberts, is working to bring attention to an abandoned United Benevolent Society cemetery, which has several headstones of African-American Civil War veterans, as part of its community outreach program.
- This community is also blessed with the work of educator and local historian, David Smith. Mr. Smith has identified and documented a large portion of

Christian and surrounding counties' African-American cemeteries. These had previously never been reported.

Caldwell County — Haleck's Chapel Cemetery

- In Caldwell County, Reverend Jerry Gray and other volunteers have worked to restore Haleck's Chapel Methodist Church, school and cemetery, with the assistance of a grant from the African American Heritage Commission. The chapel was built 130 years ago and the adjoining cemetery contains the grave markers of 12 freed slaves and two members of the U.S. Colored Army detachment from the Civil War.

V. KEY ISSUES FACING KENTUCKY CEMETERIES

In receiving surveys, conducting site visits and talking with citizens, the Task Force identified a number of common issues.

A. Access Issues:

Issues involving access generally involve small private cemeteries. Among these issues are the following:

1. Physical access for descendants, friends and historians or historical societies can be problematic due to the lack of public or even passable roads or paths.
2. Denial of access by property owner.
3. Visitors' interference with rights of property owner including privacy, agricultural activities, etc.
4. Lack of understanding of the legal rights and responsibilities of all parties.



Issue Analysis:

No Kentucky statute specifically provides for the right of access to cemeteries. As early as 1871, however, courts have held that relatives of the deceased have a right of access to the cemeteries in which the deceased are buried. In the case of *Hutchison v. Akin, et al.*, Ky., 5 Ky.Op. 373 (1871), the court held that a property owner was compelled to "permit the relatives of [those] buried there to exercise the right of ingress and egress to and from said cemetery on proper occasion and for proper purposes."

Since that time, Kentucky courts have further clarified their position on access to cemeteries. In *Commonwealth of Kentucky, Department of Fish & Wildlife Resources v. Garner*, 896 S.W.2d 10 (1995), the Kentucky Supreme Court held that "[t]he right of ingress and egress to a cemetery is to be used for proper occasion and proper purposes. The right of ingress and egress and its dimension is not unqualified." *Id.* at 13. Rather, both the property owner and the relative of the deceased must exercise their respective rights without violating the rights of the other. "The owners of the easement and the servient estate have correlative rights and duties which neither may unreasonably exercise to the injury of the other." *Id.* In applying that standard, the Court stated that a property owner could not make access "materially inconvenient." *Id.* On the other hand, individuals visiting the cemetery "must be reasonable and as little burdensome to the landowner as the nature and purpose of the easement will permit." *Id.*

The Consumer Protection Division of the Attorney General's Office mediates disputes regarding access several times each year. In these situations, once the law is explained to both parties, the issue is usually resolved. Several nearby states have enacted legislation clarifying access rights and responsibilities. It is recommended below that the General Assembly pass legislation clearly defining the right of access to private family burial grounds. See Recommendations, Section IX below.

B. Desecration issues

Issues arising that concern cemetery desecration include:

1. Destruction through neglect or natural processes.
2. Destruction by vandalism.
3. Encroachment and destruction by private or public development, e.g., residential, commercial, industrial, transportation.
4. Destruction by livestock or agricultural, logging operations or mineral extraction.
5. Desecration through improper burial practices.
6. Lack of understanding of legal rights and responsibilities.

7. Enforcement of statutes prohibiting desecration.
8. Looting of Native American and historic graves.
9. Intentional, unauthorized removal of tombstones, fencing and other cemetery items.
10. Intentional destruction or defacement of tombstones.

Issue Analysis:

Cemetery desecration has many causes. The most common form of desecration appears to occur through the neglect of small family or community graveyards. Some cemetery and funeral home industry representatives have described this situation as an inevitable result of allowing private burials without requiring perpetual care. Desecration resulting from neglect may also be accompanied by destruction caused by the failure of subsequent landowners to



protect the graveyard from destructive effects of agriculture, mining or timbering activities. Finally, lax enforcement of statutes prohibiting or criminalizing grave desecration has been reported in several instances. Desecration through natural processes such as erosion, settling, cracking of monuments and storm damage accompanies neglect but occurs to some degree in all cemeteries over time. Desecration through improper burial practices may be deliberate, as in the cases of Eastern, Greenwood and Schardein in Louisville, or it may occur through inadvertence or negligence as appears to be the case at Cove Haven in Lexington. Looting of Native American and historic graves for burial goods and human remains

is another form of desecration. These activities are an ongoing threat to Native American and historic graves.

As provided in Section VI, willful cemetery desecration is a criminal offense in Kentucky and also gives rise to private rights of action by aggrieved family members. Recommendations are offered to strengthen these laws and also to provide additional education to members of the public and government officials regarding these laws in order to provide a better understanding of the laws and methods of enforcement. See Recommendations, Section IX below.

C. Improvement and Future Care Issues of Kentucky Cemeteries

Issue Analysis

This section addresses problems facing communities attempting to protect and restore cemeteries to places of dignity, respect and pride, as well as addressing the financial condition of Kentucky's 272 regulated cemeteries. A number of issues arise in this area:

1. Identification of legal responsibility for maintaining cemeteries depending upon ownership.
2. Lack of financial and/or human resources to maintain cemeteries.
3. Lack of permanent organization with resources to maintain cemetery.
4. Adequacy of perpetual care trust funds at regulated cemeteries.
5. Lack of community or government concern regarding certain neglected cemeteries.
6. Preservation, restoration and repair of monuments, fencing, buildings and other personal property and fixtures.
7. Determining the proper role of federal, state, local government.
8. Determining the role of community volunteers.

Unregulated Cemeteries

The single greatest desecration issue—and the one presenting the largest challenge—is the neglect of small family, church and community cemeteries. With industrialization and the increasing shift of population in urban and suburban areas, land ownership changes have occurred more frequently than in prior times. As society becomes more mobile families frequently relocate away from ancestral burial sites, leaving no descendants to maintain the family graves. The Task Force has received comments from individuals and some policy makers that as long as burials in cemeteries or on private property with no perpetual care fund occur, the number of neglected cemeteries will continue to grow. In reviewing the statutes from surrounding states, no statute was found prescribing that burials must occur in a

cemetery with perpetual care funds. The Task Force recognizes that the freedom to bury outside cemeteries with perpetual care complicates preservation efforts. The decision regarding place of burial is intensely personal and private. The right to be buried on private property is firmly established in Kentucky and in surrounding states. Any change in this law raises fundamentally important policy questions regarding burial rights and responsibilities of individuals and societies for future maintenance of gravesites. These questions merit further discussion by policymakers. There remain, however, concrete steps that can be taken to recognize, preserve and honor the heritage of all Kentuckians through measures recommended in Section IX. Improving public education of burial options and laws regarding perpetual care can assist in this regard.

While there are many neglected cemeteries, the Task Force has made site visits to all regions of the state and encountered many different individuals and groups working to restore and preserve cemeteries in their communities. At each site location and through the thousands of survey responses, the task force received similar stories of the many challenges and hurdles that volunteers and community leaders have encountered as stated above in Section IV. Although several communities report successful ongoing efforts to preserve a particular cemetery all acknowledge that additional resources are needed to truly make their cemetery the place of community respect and pride that is their goal. Also acknowledged is that many more cemeteries in their community are entirely neglected.



It is difficult to estimate the number of neglected cemeteries and acres from the survey results. As stated earlier, over 12,000 cemeteries have been identified through the Task Force Survey and many more are believed to be unidentified at this time. Of the 9,364 surveys entered as of the filing of the Draft Report, only 126 cemetery acres are reported as abandoned, however only 2,157 (23%) of those

surveyed answered the question "Is the cemetery abandoned." Of that 23%, 1,340 cemeteries reported that the cemetery was abandoned. This represents only 14 % of the total cemeteries entered. Only 108 surveys of the 1,340 abandoned (8%) provided acreage figures.

Based on anecdotal reports, discussions with community leaders, local historical societies and task force members, it is believed that the number of neglected cemeteries is much, much higher, likely in the thousands of acres. Based on the limited number of cemeteries reporting acreage, it can be estimated that as many as 70,000 acres in the state, perhaps more, are occupied by cemeteries of some kind. Based on the industry estimate of cost per acre - between \$2,500 and \$6,000 per acre - the cost of maintaining all of the cemeteries in the state could conceivably be roughly between \$175 and \$420 million annually.

Although the cost of maintaining the neglected cemeteries in Kentucky can be only approximated, it is clear that finding the resources necessary to provide adequate maintenance to all cemeteries will require an enormous commitment of public and/or private resources.

Regulated Cemeteries

As reported in Section IV above, a financial survey was provided to each regulated Kentucky cemetery. In reviewing the information provided, as many as 50% of those responding may face the future prospect of inadequate resources to maintain the cemetery. Based on anecdotal discussions with industry representatives, task force members and regulators from other jurisdictions, there appear to be a variety of reasons for this potentially troubling picture including:

Although KRS 381.697 requires a legal owner to maintain the cemetery, there is no express statutory requirement that a cemetery develop an adequate perpetual care fund or a regulatory framework for doing so. Although there is a statutory requirement that cemetery companies have a perpetual care fund, the 20% deposit requirement alone does not guarantee that these deposits will generate a sufficient trust to meet future needs.

Although several cemeteries deposit more than the statutory minimum in order to establish an adequate endowed care account, many other cemeteries deposit the statutory minimum 20% and charge an insufficient price per grave to ensure that the 20% deposit is sufficient to meet future needs.

Perpetual care requirements went into effect only in 1984. Prior to that there was no legal requirement to establish a perpetual care fund. Accordingly, although a cemetery may have complied with all statutory requirements since 1984, if no trust existed prior to that date deposit of the statutory minimum might not be

sufficient to provide adequate future income depending on a number of factors, including the area within the cemetery previously developed, price per grave, operating expenses, etc.

As explained in the section analyzing laws from other states, Kentucky's perpetual care laws are among the strongest in the nation. According to industry representatives and regulators around the country, the problem of underfunded perpetual care trust funds is an issue that exists in most, perhaps every, state.

Considerations in addressing the issue

Kentucky's statutory perpetual care funding requirement of 20% per grave space is among the highest in the nation. According to an industry survey, only five states require as high a contribution. (Arkansas, Iowa, Minnesota, New Mexico and Rhode Island). Only one, New Mexico, is higher at 25%.

Factors affecting the financial condition of regulated cemeteries vary from property to property making a "one size fits all" approach to correcting trust fund deficiencies problematic.



Imposing additional costs on marginal operations may hasten the decline in maintenance and lead to neglect of the cemetery, causing consumer harm and placing additional burdens on communities and/or governments.

Educational assistance is available from the Kentucky Cemetery Association and Office of Attorney General Consumer Protection Division and elsewhere to assist

businesses in developing a business plan which improves the financial condition of perpetual care trusts.

Blame for inadequate funding may rest with current or prior owners who failed to set aside a sufficient trust fund. Regardless of blame, the current owner is left to face the problem. According to nationally-acclaimed cemetery expert John F. Llewellyn in commenting on this national issue:

It is sad that many endowment care funds are probably inadequately funded. While we can look back and criticize preceding boards or managers for inadequate funds, current cemetery managers or board members who have not taken steps to correct insufficient funding are failing to fulfill their responsibilities for the future of the cemetery. Cemetery managers or boards may inherit problems from past generations, but that doesn't diminish their responsibility to take action to correct these problems. Even when a problem cannot be corrected fully, managers and board members have a responsibility to work toward improving the situation.

— John F. Llewellyn, *"A Cemetery Should Be Forever"*, (Tropico press, 1998).

It has not been determined when these regulated cemeteries will face a financial crisis. The information developed from the survey has been provided to make each entity aware of the cemetery's financial picture based on the information provided. It is recommended that the industry and Office of Attorney General continue to provide education opportunities for cemetery operators in order to assist in the improvement of underfunded trusts.

D. Record Issues

The importance of cemeteries, burial and death records, and monument inscriptions to historians, family members, genealogists, preservationists and consumers cannot be overstated. The following issues have been identified concerning the treatment of cemetery records:

1. The lack of reliable systems for recording and locating burial sites within many cemeteries;
2. The lack of systems for recording personal information about the deceased relative for genealogical research;
3. The lack of a system for recording the location of each cemetery within the state;
4. The loss of information transcribed on monuments; and
5. The need for a single repository for historic information related to cemeteries and death records.

Issue Analysis:

Historians, genealogists, archaeologists, consumers and cemeterians have all noted difficulties caused by a lack of adequate cemetery and burial records and related issues of accessibility. The lack of information about burial locations at times has led to unintended desecration as stated above. Currently, limited information about the deceased is recorded on death certificates and cemetery records. The information includes date of birth, date of death, cause of death and county of burial. There is no legal requirement that cemeteries maintain a map or other information such as monument inscription. There is no requirement that geographic information about cemeteries' locations be recorded.

It is recommended below that certain legislation be passed to improve the recording of this important information and to provide for a single state repository of such information.

VI. THE ROLE OF STATE AND LOCAL GOVERNMENTS IN OVERSEEING CEMETERIES/REVIEW OF KENTUCKY REVISED STATUTES

State and local governments have various roles related to cemeteries under the Kentucky Revised Statutes. These roles are described briefly below. Fuller explanations, as well as the statutory provisions themselves, are provided in Appendix D.



Local Government

Counties and cities have authority under the KRS 67.083(3)(g) and 97, respectively, to operate and maintain cemeteries. Cities alone also have responsibilities under KRS 381 to ensure that cemeteries within their jurisdictions are protected. Although it is within the authority of counties and cities to provide for the maintenance of neglected cemeteries within their jurisdictions, there is no statutory requirement that counties or cities provide for such maintenance.

KRS Chapter 381 provides limited requirements for cemetery maintenance, abandonment determinations, the removal of graves, and the enforcement authority when these statutes are violated.

- **Cities are required to protect cemeteries within city limits**

KRS 381.690 provides:

Whenever any burial grounds lie within the corporate limits of a city the governing authorities of *the city shall protect the burial grounds* from being used for dumping grounds, building sites, playgrounds, places of entertainment and amusement, public parks, athletic fields or parking grounds.

Again, this statute does not apply to counties.

- **Cemetery Maintenance Requirements and Enforcement**

The legal owner of a cemetery has the obligation to maintain it in accordance with KRS 381.697. This statute, however, expressly exempts "private family cemeteries." Enforcement responsibility lies with the county or city under KRS 381.990(2).

KRS 381.697 provides:

Every cemetery in Kentucky except private family cemeteries shall be maintained by its legal owner or owners, without respect to the individual owners of burial plots in the cemetery, in such a manner so as to keep the burial grounds or cemetery free of growth of weeds, free from accumulated debris, displaced tombstones, or other signs and indication of vandalism or gross neglect.

The penalty for violating this statute is found in KRS 381.990(2), which provides for a fine of not less than one hundred dollars (\$100.00), but no more than five hundred dollars (\$500.00).

KRS 61.350, enacted in 1942, provides a \$25.00 penalty for officials "who fail or refuse to enforce any statute bearing upon cemetery companies or burying grounds...."

Cemetery Ownership by Local Government

As stated above, counties and cities are authorized under the KRS 67.083(3)(g) and 97, respectively, to operate and maintain cemeteries.

The maintenance requirements in KRS 381.697 apply equally to cemeteries that are owned and operated by city or county governmental entities. According to the information collected from Attorney General's cemetery surveys, 2% percent of cemeteries are owned and operated by a local or state government entity. Of the 3,791 responses noted above regarding the type of ownership, 80 indicated they were owned by a governmental entity. The maintenance requirement applies equally to these cemeteries as they do to any other cemetery not considered a private family cemetery.



Information collected from surveys returned to the Attorney General's Office regarding cemetery ownership and maintenance indicates that approximately 61% of all cemeteries are private family cemeteries. On questions regarding the types of ownerships for cemeteries, 3,791 of 9,364 responded. Of those that responded, 2,870 (76%) indicated that theirs was a private family burial ground. As that

applies to KRS 381.697, more than half of Kentucky's cemeteries are exempted from the maintenance requirement.

The penalty for violating the maintenance requirement of KRS 381.697 includes the \$100 to \$500 fines of KRS 381.990(2) in addition to the fines of KRS 381.990(4) which include a fine of not less than \$25.00 but no more than \$250.00.

The enforcement authority for cities to ensure that cemeteries are properly cared for comes from KRS 381.700. This statute gives cities discretionary authority as follows:

The governing authorities of any city within whose corporate limits any burying grounds lie may require the owner or those having claims to the grounds to properly care for them.

The penalty for violating this statute is again found in KRS 381.990(2), imposing a fine of not less than \$100.00 but no more than \$500.00. Although the statute appears to apply to all cemeteries, such a reading would conflict with the limitation found in KRS 381.697 exempting private family burial grounds.

- **Requirements related to relocating abandoned cemeteries**

In addition to the Kentucky Department of Transportation requirements summarized below, KRS 381.720 through 381.750 provides the procedures for a city of the first, second, third, fourth, or fifth class to have a cemetery located within the city boundaries declared abandoned. This can be done only when the land comprising the cemetery is needed for a public purpose. If that is the case, an action may be instituted in circuit court to vest title to the property in the city. Public notice must be given, inviting claims for damages from those asserting rights to the cemetery, lots within the cemetery, or the remains of individuals interred in the cemetery. A three-person commission is established to evaluate the claims and award to claimants the value of the property taken.

If no claims are made or after all claims have been addressed, a declaration of abandonment is entered and claimants have 30 days to remove monuments and mortal remains from the cemetery. All remains not removed within 30 days are to be removed at the expense of the city or governmental agency seeking the abandonment determination. All such remains are to be reinterred in another suitable cemetery. This provision does not specify what period of time constitutes abandonment. When a property owner or county makes a request for an abandonment determination under KRS 381.755, discussed below, that statute notes that a cemetery will only be considered abandoned if left untended for 10 years. Under KRS 381.720, a city's legislative body may declare a cemetery

abandoned when, in its opinion, a cemetery "has been abandoned and the land comprising the cemetery is needed for a public purpose." For equity in the treatment of cemeteries, it may be advisable to include in the abandonment proceedings requested by cities a requirement for a ten-year period similar to that of KRS 381.755.

When a property owner or county wishes to have a cemetery declared abandoned, KRS 381.755 is the appropriate statutory authority. The process is similar to that in KRS 381.720 through 381.750, in that application to the court must be made. After 60 days notice of the intent to remove and relocate graves on the property the court may direct the removal. Expenses for the removal and relocation are to be paid by the party or county requesting removal. Relocation of the graves is to be to a "suitable place." The statute notes that a grave or cemetery will be considered abandoned only after it has been left untended for 10 years.

Criminal Provisions

The desecration of cemeteries is addressed in the Kentucky Penal Code, found in KRS Chapter 525. In that chapter, the desecration of venerated objects, the violation of a grave, and the abuse of a corpse are prohibited. Penalties for violating these provisions range from Class A misdemeanors to Class D felonies.

- **Desecration of Venerated Objects, First Degree - KRS 525.105**

Desecration of a venerated object in the first degree occurs when human remains are disinterred for the purpose of exploitation or commercial sale of the remains or objects buried with them. Violating this statute is a Class D felony. The penalty for a Class D felony is imprisonment for one to five years. (KRS 525.020).

This statute is limited by the requirement that the purpose for the disinterment must have been for exploitation or commercial sale of the remains or objects themselves. If the grave were desecrated for non-economic gain such as burial of other remains or land development, the statute would not apply. Other statutes apply to the unlawful disinterment of remains (see below) but none carry a felony penalty for a violation of the statute.

- **Desecration of Venerated Objects, Second Degree - KRS 525.110**

Desecration of a venerated object in the second degree occurs when a public monument, object or place of worship is intentionally desecrated or when a national or state flag or other patriotic or religious symbol is intentionally desecrated in a public place (KRS 525.110). Violating this statute is a Class A misdemeanor. The penalty for a Class A misdemeanor is imprisonment for 90 days to 12 months. The offense previously expressly included desecration of a "place ... of burial" in

subsection (1); however, it appears that this phrase was deleted in 1992, when KRS 525.115—creating the offense of "violating graves"—was enacted.

- **Violating Graves - KRS 525.115**

Violating a grave can occur when one of three things occur: (1) the intentional mutilation of a grave, monument, fence, shrubbery, ornament, grounds or building in or enclosing any cemetery, (2) the intentional destruction, removal, or damaging of a headstone, footstone or tomb, and (3) intentionally digging into, plowing over or removing any ornament, shrubbery, or flower placed upon any grave (KRS 525.115). Violating this statute is a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.

During the 2000 Legislative Session there was an attempt to change the first offense of grave violation, KRS 525.115, from a Class A misdemeanor to a Class D felony. (HB 433). This proposed amendment was unsuccessful but the statute was amended to require a defendant convicted of violating graves to restore the cemetery to its pre-damage condition. This amendment took effect July 14, 2000.



No Kentucky case law could be found addressing the propriety of a landowner permitting the grazing of livestock on property that is known to contain a cemetery. However, it is possible the prohibitions against violating graves may apply to the practice of grazing livestock on cemeteries. As noted above KRS 525.115, prohibiting grave violations is violated if a person intentionally "mutilates the graves, monuments, fences, shrubbery, ornaments, grounds, or buildings in or enclosing any cemetery or place of sepulture." Although there is no reported case law, knowingly permitting livestock to roam freely in a cemetery could be seen as a violation of this statute.

No other states have passed legislation to directly address the issue of cemetery damage caused by livestock grazing in cemeteries. As with access issues, a statute which codifies the protection afforded cemeteries from livestock would preempt many of the questions that arise concerning what can be done with private family cemeteries.

Mining and mineral extraction and their effects on cemeteries have been addressed, in part, by statute and also by case law. The detrimental effect mining can have on cemeteries has been recognized and preventative measures have been taken. In both chapters 350 and 351 of the Kentucky Revised Statutes, measures are taken to protect cemeteries. While a permit from the Natural Resources and Environmental Protection Cabinet is required before any surface mining can begin, under KRS 350.060 the permit applicant must submit a map to the Cabinet listing, among other things, the names and location of all cemeteries on the land affected and within 500 feet of the area. Mining within 100 feet of a cemetery is prohibited (KRS 350.085). In addition, the Cabinet will not approve a permit if the operation will constitute a hazard or cause physical damage to a cemetery. *Id.* KRS 351.175 prohibits the issuance of a mining license to all owners, operators, lessees, and licensees of coal mines if the mine will underlie a cemetery. The only exception to this prohibition is when two-thirds of the cemetery's governing body approve the mining operation.

- **Abuse of Corpse - KRS 525.120**

The abuse of a corpse is prohibited in KRS 525.120. Abuse of a corpse is defined as intentionally treating a corpse in a way that would outrage ordinary sensibilities. This offense is a Class A misdemeanor unless the act involved sexual intercourse with the corpse. In that case the offense becomes a Class D felony.

- **Private Remedies**

In addition to criminal penalties, Kentucky courts have consistently upheld the right of family members to sue for relief for the wrongful interference with a grave or infliction of injury to a corpse.

In the case of *Louisville Cemetery Association v. Downs*, 241 Ky., 773, 45 S.W.2d 5,6 (1931), the Court held:

A recovery may be had by the next of kin or the surviving spouse for an unwarranted interference with the grave of a deceased, or for the infliction of an injury to a corpse, if either be done (a) maliciously, (b) or by gross negligence, (c) or wantonly, i.e., with a reckless disregard of the rights of another, (d) or for an unlawful or secret disinterment thereof, or (e) an action of trespass quare clausum fregit may be maintained by the holder of the title, or the person in possession of, the lot on which a grave is located, or (f) for the removal of a body from one grave to another by those in authority and control of the cemetery or burial ground, without notice, or an opportunity, to him who in law is entitled to be present, if he desires, before its removal. (Citations omitted.)

In that case, compensatory damages for mental anguish were awarded. Courts have since narrowed that ruling, holding that they "would not permit recovery of compensatory damages for mental anguish in every case involving a corpse or a grave." *Ferguson v. Utilities Elkhorn Coal Company, Ky.*, 313 S.W.2d 395, 398 (1958).

While Kentucky statutes do not specifically address the issue of agricultural operations on pre-existing cemeteries, Kentucky case law has interpreted the existing statutes as prohibiting the plowing or removal of soil from graves. This is



consistent with the case law of surrounding states as well. The Supreme Court of Indiana upheld a verdict against an individual for removal of a tombstone and the plowing of the surrounding cemetery.

Coopridge v. State, 218 Ind. 122, 31 N.E.2d 53 (1941). This was based, in part, upon Indiana statutory law which prohibits the willful, mischievous or malicious removal of a tombstone. *Burns' Ann. St.*, 70-4513. In the case of *Wormley v. Wormley*, 207 Ill. 411, 69 N.E. 865 (1904), the defendant was charged with tearing down the fence of a family cemetery, grazing cattle on the cemetery, and threatening to remove the headstones and plow the cemetery. In that case, the Illinois Supreme Court held:

It is well settled in the United States that cemeteries are among the purposes for which land may be dedicated, and it is held that, upon such dedication, the owner is precluded from exercising his former rights over the land. (Citation omitted.) It is also well settled that a court of equity will enjoin the owner of land from defacing or meddling with the graves on land dedicated to the public for burial purposes, at the suit of any party having deceased relatives or friends buried therein.

State Government Agencies

A number of state government agencies have some involvement with cemeteries. This section offers a brief summary of the nature of these agencies'

jurisdiction. A more complete description of the agencies' roles is provided in Appendix D.

1. Kentucky Historical Society

Under KRS 171.313 the Kentucky Historical Society (KHS), through the Kentucky Cemetery Preservation Program, is charged to "collect, maintain, preserve, categorize, and cause to be published necessary information concerning Kentucky family cemeteries...." In addition, KHS is mandated to undertake a program to restore and maintain gravesites of Kentucky's Governors and three Vice Presidents of the United States, and "First Pioneers." Priority for "First Pioneer" grants is given to settlements in Boonesboro, Harrodsburg and Stanford. KHS partners with communities to preserve and promote cemeteries through grants that fund preservation and repair projects, seminars that teach best practices in cemetery preservation, and educational materials that provide guidance and instruction to local citizens.



The KHS also has a program mandated by the KY General Assembly called the Kentucky Cemetery Records Project, which has led to the location and recording of hundreds of thousands of graves. This information is being managed by the KHS and in the future will be available through the Internet.

2. Kentucky Heritage Council

The Kentucky Heritage Council, under KRS 171.381, is charged with preserving Kentucky's heritage, with an emphasis on matters related to real



property. The Heritage Council administers grants for various historic preservation projects. Attached to the Heritage Council for administrative purposes, the Kentucky African-American Heritage Commission administers a grant program for

the preservation of African-American Heritage (KRS 171.805). These African American Heritage Grants are 60/40 (40% local) matching grant funds and are available for a wide variety of heritage efforts including African-American Cemeteries.

3. Kentucky Department of Parks

KRS 148.161 requires the Department of Parks to maintain four (4) Civil War cemeteries in Oldham, Pulaski, Graves and Boyle County and take legal title if requested by the owners of the cemeteries and appropriates a maximum of \$2,500 per year for that purpose. To date none of the cemeteries has requested the Department to take legal title, but three of the four have applied for and received reimbursement for maintenance expenses. Parks reports the condition of all four cemeteries is acceptable and has no report of complaints.

4. Office of State Archaeology (Department of Anthropology University of Kentucky)

The Office of State Archaeology (OSA) is responsible for maintaining a comprehensive and growing database of recorded archaeological sites in the state of Kentucky. These sites include unmarked prehistoric Native American gravesites as well as marked and unmarked historic cemeteries.

5. Kentucky Transportation Cabinet

Through various transportation projects, the Kentucky Transportation Cabinet comes in contact with many of the cemeteries spread across the state. The Cabinet has established procedures for the relocation of human remains in its "Right of Way Manual." The manual provides the manner in which decisions are to be made if graves need to be relocated, to where, by whom, in what manner, and who is responsible for each step of the process.



6. Kentucky Department of Veterans' Affairs

The Kentucky Department of Veterans' Affairs is working on four separate Kentucky Veterans Cemeteries to be placed in different regions of the Commonwealth. Groundbreaking for the first, comprising 73 acres in Christian County, is scheduled for November 2001.

7. University of Louisville Department of Archaeology

University of Louisville Department of Archaeology has provided technical assistance on an ongoing basis to the Jefferson Circuit Court and court-appointed receivers for Eastern, Greenwood and Schardein cemeteries. This assistance includes 1) analyzing burial records, resulting in the creation of a database showing

grave locations, 2) maintaining the database, 3) responding to agency and public inquiries concerning grave locations to assist in disinterments and burials, 4) providing on-site review of graves and burials, and 5) responding to court-related inquiries.

8. University of Kentucky Center for Historic Architecture and Preservation

The University of Kentucky Center for Historic Architecture and Preservation (CHAP) creates new knowledge about Kentucky architecture and landscapes for the purpose of preservation. It disseminates that knowledge to local, regional, and national audiences and maintains an archive of its research efforts. CHAP hopes to establish a conservation program aimed at assisting community organizations, local historical societies and other agencies in the restoration of cemetery properties by providing expertise in all areas of cemetery conservation.

VII. COMPARISON OF KENTUCKY LAWS TO OTHER STATES

In order to provide a comparison of funding programs and cemetery regulatory programs of other states Task Force staff obtained and reviewed a 1998 cemetery statute survey performed by the International Cemetery and Funeral Association (ICFA), (see Appendix E), mailed surveys to cemetery regulators in other jurisdictions, (see Appendix F), and reviewed cemetery statutes from neighboring states.

Statutes were reviewed in relation to the issues identified above in Section V and are organized in similar fashion. It should be noted that there are many similarities in how neighboring states address issues involving access, desecration, and regulation. What is presented below is a discussion of statutes that address these issues in significantly different ways than in the Kentucky Revised Statutes.

Access Issues

The following is a list of particular statutory schemes addressing access issues including what parties have right of access to private property and the rights and responsibilities of the landowner and visitors as well as governmental authority to expend public funds to provide access. Some states limit the right of access to descendants; others provide rights to friends and historical societies.

1. For former public cemeteries that have no public access **Alabama** authorizes relatives to acquire a right-of-way with limitations. For example, the access

may not be through yards, gardens, stables, etc. The landowner is required to be compensated. Ala.Code 1975 ?18-3-20.

2. **Arkansas** prohibits fencing commercial cemeteries without providing access suitable to an automobile. Violation is a misdemeanor. A.C.A. ?5-39-212. Arkansas also allows for county officials to maintain any cemetery containing at least six graves. A.C.A. ?14-14-812.
3. **Florida** law establishes an easement over private property for the benefit of descendants as a way of access to family burial grounds. F.S.A. 704.08. This law also allows descendants to request that the current owner maintain the cemetery and if the landowner refuses allows the descendants to maintain.
4. **Mississippi** expressly allows counties to maintain roads to public cemeteries. Miss. Code Ann. ?19-3-75.
5. **Virginia** law allows local historical societies access to private property upon notice to landowner and if landowner fails to object. Va. C. ?57-27.1.
6. **West Virginia** law provides a comprehensive statutory scheme providing the right-of-access for descendants and friends. Code, ?37-13A. The law also makes persons accessing private property liable for damage they may cause, and provides that the right does not include use of motor vehicle unless there is a road or otherwise reasonable right of way and written permission is obtained. The law also gives the right to sue if permission or access is unreasonably denied. The statute declares that it does not affect preexisting rights in prior deeds.

Desecration Issues

Penalties for cemetery and grave desecration from neighboring states is provided below:

1. **Arkansas** a). Destruction or removal of grave marker. A.C.A. ?5-39-402 Class D Felony, b). Defacing objects of public respect. A.C.A. 5-71-215 Class A Misdemeanor if value to repair is less than \$500, Class D Felony if more than \$2500.
2. **Alabama** a). Desecration of Venerated Objects (includes grave marker) Al.Code ?13A-11-12 Class A Misdemeanor.
3. **Tennessee's** Family Burial Grounds Protection Act requires a specific form of deed for transfers of property containing a cemetery providing notice to subsequent grantees. T.C.A. 46-8-101. The law also requires subsequent

purchaser not to "disturb" graves identified in such conveyances and gives the option to have graves removed according to statutory process.

4. **Virginia** law provides that a landowner with property adjacent to a neglected or abandoned cemetery may demand that the cemetery owner clean up the property, sue if the property is not cleaned up and clean the property up and sue for costs of doing so which the court has the discretion to award (Va. Code ? 57-39.1).

Improving the Condition of Existing Cemeteries

1. **Alabama** law expressly encourages the use of prison labor for the care of cemeteries (Ala.Code 1975 ?14-5-33).
2. **Ohio** law pertaining to regulated cemetery companies allows withdrawal of dividends and interest income from perpetual care for the maintenance of the cemetery, like Kentucky, but expressly prohibits withdrawal of capital gains. Oh. Rev. C. Ann. 1721.21 Kentucky law allows for the withdrawal of "income" for such purposes. It does not define the term "income."
3. **Arkansas** requires that each cemetery be registered with the county and prohibits burials in unregistered cemeteries (A. C. A. ?10.1-2211).
4. Another **Virginia** law provides that improperly interred remains are to be removed and reinterred correctly at the cemetery company's expense with notice to and opportunity to be present for the next of kin (Va. Code ?57-27).
5. Another **Ohio** law provides that all public burial grounds outside corporate limits are vested in the county and requires the county to maintain same (Oh. Rev. C. Ann. 517.10).
6. **Tennessee** law permits the withdrawal of net capital gains (after taxes) provided that the amount does not exceed 5% of the fair market value of the trust (T. Rev. C. 46-2-302).

Records Issues

Laws pertaining to cemetery records vary widely from state to state. Some of the statutes relating to required language in deeds can serve the added interest of preventing desecration by providing notice to subsequent landowners and officials of the existence and location of a burial ground.

1. **Florida** law expressly requires burial records recording name and location of deceased (Fl. St. Ann. 497.309).

2. **Indiana** requires that deeds conveying property on which a cemetery is located record that fact in clear and conspicuous fashion at the bottom of the deed and requires not only recordation at the courthouse but also that the local official send a copy to the state department of historic preservation and a local cemetery board, if one exists (I.C.A. 14-21-3-1).

Funding

Different funding schemes are presented in Section VIII.

1. **Virginia** provides funding for specifically identified Confederate cemeteries and graves (Va. Code ?10.1-2211).

VIII. FUNDING SOURCES

Kentucky State Government Grant Programs



- **Kentucky Historical Society**

The Kentucky Historical Society, through the Kentucky Cemetery Preservation Program, codified in KRS171.381, partners with communities to preserve and promote cemeteries through grants that fund preservation and repair projects, seminars that teach best practices in cemetery preservation, and educational materials that provide guidance and instruction to local citizens.

The grant programs are limited by statute to 1) graves of

former governors and vice-presidents, and 2) early pioneers. The budget for each of these programs is \$22,500 and \$12,500 respectively. Priority for First Pioneer grants is given to cemeteries in Boonesboro, Harrodsburg and Stanford under KRS 171.313.

- **Kentucky Heritage Council**

The Kentucky Heritage Council administers grants for a broad range of historic preservation efforts. The grants typically require a 10% local match. The Kentucky African-American Heritage Commission, which is part of the Heritage Council, also provides matching grants and has provided grants specifically for cemeteries in the past. The amount of these grants has not exceeded \$3,000. The entire grant budget for the Heritage Council is \$150,000, which includes the African-American Heritage Commission's \$30,000 grant budget.

- **Other Funding Sources**

While the Commonwealth of Kentucky offers a few grant opportunities for cemetery preservation and education efforts, a vast number of Kentucky's deserving cemeteries in need are ineligible to apply for these funds. Alternative funding sources will need to be identified for future aid to help this large group of cemeteries. Although there are only a few granting sources specifically providing for cemetery preservation, cemeteries can apply for funding from a number of both federal government and private sources. Generally, the applicant must demonstrate the value of the cemetery's significance in terms of culture, education, heritage and the environment.

Federal Monies

The Federal government offers funding for historic preservation efforts through a number of its agencies. Appendix G provides a list of granting agencies and contact information.

- **National Park Service and the National Endowment for the Arts.**

Since Fiscal Year 1999, this partnership has awarded over 238 grants totaling \$94 million to projects that preserved nationally significant and endangered historic treasures. The funding program titled "Save America's Treasures," has funded a number of endeavors that preserved historic buildings, structures, art collections, archives and sites. Selection criteria for this grant requires that projects have national significance, demonstrate urgent preservation need, and that might find a non-federal matching fund from such entities as states, localities, corporations, foundations, or individuals.

The Federal government also provides grants to projects associated with specific cultural or historical events.

- **United States Department of Education**

The Department of Education's Underground Railroad Educational and Cultural Program funds projects from nonprofit education organizations that research, display, interpret and collect artifacts relating to the history of the Underground Railroad. A number of cemeteries in Kentucky inter leaders in the Underground Railroad.

- **National Park Service**

- *Underground Railroad*

The Park Service's National Underground Railroad Network to Freedom Program helps local communities, property owners, and organizations that conduct historical research on sites associated with the Underground Railroad, ensure value of a site so it might be eligible for federal funding that is administered by each state's historic preservation officer. Value is given to a site certifying it as a member of the National Register and/or as a National Historic Landmark.

- *Native American Projects*

Grant funds are available to federally recognized Indian tribes with programs that support historic preservation and promote the continuation of living cultural traditions. Projects must locate and identify cultural resources, include a preservation plan, document history and traditions, and provide education and training projects in historic and cultural preservation.



Private Monies

Probably the largest group of funding resources available to cemeteries is found in private foundations. The grants of such entities are similar to the federal governments in their awarding to both sites and projects of historic value or to those of cultural value.

- **National Heritage Foundation**

Through the National Heritage Foundation a project can find a number of foundations that support preservation in a myriad of ways. These foundations fund preservation efforts that are considered historic, cultural, environmental or religious in scope. Almost all of them fund project sites or educational projects that use sites to demonstrate historic, cultural, environmental or religious value.

- **National Trust For Historic Preservation**

The National Trust has both Local Initiative and Collaborative Pilot project funding for entities with preservation goals.

- **Local Initiative Program**

Local Initiative funds are available to programs to strengthen and stabilize organizational capacity and to develop resources necessary to hire and effectively use professional staff.

- **Collaborative Pilots Program**

Funding from the Collaborative Pilots program looks for creative partnership projects that advance the preservation mission and build the preservation movement at a local level. Grant funds are available to assist in planning projects in architecture, archaeology, preservation, organizational development, law, landscape architecture, engineering, land-use, and/or public policy.

As with the federal government there are foundations which fund projects that are centered on cultural communities or specific historic events. Among these granting foundations are some of the largest philanthropists across the nation. The Kellogg Foundation has funded programs associated with the Underground Railroad. Likewise, a number of other entities have an emphasis on funding Underground Railroad projects, like the Federated Department Stores Foundation and Apple Computer, Inc. (see Appendix H for a list of these grant programs and contact information).

- **Funeral Industry**

Finally, the funeral industry itself is a granting resource that should be utilized. There are a number of industry groups which fund cemetery projects that emphasize such issues as research, archiving, preservation, historic and artistic value, and public awareness initiatives. For example, the Association for Gravestone Studies provides the Forbes Award and the Oakley Award. The Forbes Award is available to organizations, individuals or institutions that provide exceptional service to the field of gravestone studies. The Oakley Award is given to individuals or groups that help to advance the mission of the association, which is to further the study and preservation of gravestones. Often these entities will also provide scholarships to individuals or project delegates to educate themselves in these fields as well (see Appendix H).

IX. Recommendations



After carefully analyzing the information compiled by the Task Force, as well as data from other states, site visits and over 8,500 surveys prepared by local officials, the following recommendations are submitted for inclusion in the Report and consideration by the 2002 General Assembly.

1. Create a special matched trust fund to maintain four Louisville cemeteries (Eastern, Schardein, Greenwood, and Newburg Petersburg) of \$1,200,000 in currently unbudgeted state funds recovered by the Office of Attorney General in consumer protection lawsuits and held in a restricted Finance Cabinet account. These funds would be combined with \$450,000 in existing trust funds and \$350,000 in local matching funds to generate \$100,000 in annual interest income. \$37,500 has already been raised in local funds.
2. Create a \$500,000 statewide grant program to provide funding for equipment and other projects to fund maintenance and appropriate historic preservation projects for gravesites and cemeteries. Grants of up to \$25,000 with local cash or in-kind match would be jointly administered by the Kentucky Historical Society and Kentucky Heritage Council through the Kentucky Historical Society's Cemetery Preservation Grants Program. Each project that receives state funds should document how the project addresses public safety, historical preservation or tourism/economic development. Local governments or organizations may apply for the grants. It is also recommended that the grant awards be staggered so that future contributions plus interest could provide grants for future years.
3. Create a tax credit and optional refund check-off program for individuals to contribute to the statewide grant program referenced in recommendation 2 above.
4. Establish Annual Kentucky Cemetery Clean-Up Week preceding Memorial Day.
5. Recognizing that there currently exist laws that prohibit desecration of graves and cemeteries, we should strengthen the law by clarifying that any willful unauthorized removal or disturbance of human remains or burial objects for any reason is a felony.
6. Require improperly buried remains to be disinterred and reentered at the cemetery company's expense with notice to family members.
7. Enact legislation requiring cemeteries to maintain adequate burial records to identify individuals and their locations within the cemetery and additional historical information as is feasible. Information should be forwarded to a single state repository with appropriate coordination among the various government agencies, universities and public and private institutions with roles in handling, managing and using the information. Establish a penalty for failure to maintain burial records and a fine of not less than \$100 nor more than \$500 per violation. Authorize the County Attorney to enforce.

8. The Kentucky Historical Society should be provided additional staff to maintain the database created by the Attorney General's Task Force on Cemetery Preservation.
9. The Kentucky Heritage Council, University of Louisville Department of Archaeology, Kentucky State University and University of Kentucky should play a vital role in the research and technical assistance involving cemetery maintenance, restoration and historic preservation.
10. Existing common law on right of access to cemeteries should be codified to clarify rights and responsibilities of descendants, friends and historical societies wishing to have reasonable access to cemeteries located on private property while recognizing and respecting the rights of current property owners.
11. The Office of the Attorney General, Kentucky Historical Society, Kentucky Cemetery Association and the Department of Local Government should prepare and conduct educational training programs for local officials on cemetery legal issues.
12. It is recommended that all statutes pertaining to cemetery maintenance, access, preservation, etc. be codified and organized in the same section of the Kentucky Revised Statutes to clarify and promote interpretation and appreciation of the law.
13. Space should be designated in state-owned cemeteries for the reinterment of Native American remains as authorized by law.
14. Deeds conveying property on which a cemetery is located should clearly and conspicuously disclose that fact